



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following Grants: **D-11628, Aztec Well Servicing Company & Related Companies Medical Plan Trust Fund (the Plan), 2012-04; D-11637, HSBC-North America (U.S.) Tax Reduction Investment Plan (the Plan), 2012-05; D-11662, Retirement Program for Employees of EnPro Industries (the Plan), 2012-06; D-11669, Genzyme Corporation 401(k) Plan and Its Successor Plans (together, the Plan or the Applicant), 2012-07; and D-11680, Citigroup Inc. (Citigroup or the Applicant), 2012-08.**

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register of the pendency before the Department of a proposal to grant such exemptions. The notice set forth summaries of facts and representations contained in the applications for exemption

and referred interested persons to the applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemptions.

The notice of proposed exemption was issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR

Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011)¹ and based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

¹The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Aztec Well Servicing Company & Related Companies Medical Plan
Trust Fund (the Plan)

Located in Aztec, New Mexico

[Prohibited Transaction Exemption **2012-04**;

Exemption Application No. **D-11628**]

EXEMPTION

Section I.

The restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the payment by the Plan to Basin Occupational & Urgent Care, LLC (BOUC), a party in interest with respect to the Plan, for the on-site provision to the Plan of urgent medical care and wellness services by a nurse-practitioner and a wellness coordinator employed by BOUC, provided that the following conditions are satisfied:

(a) An independent, qualified fiduciary (I/F), with expertise in plans providing health and welfare benefits under the Act and the fiduciary obligations thereunder, acting on behalf of the Plan, determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries

of the Plan;

(b) Before the Plan enters into the proposed transaction, the I/F reviews the transaction, ensures that the terms of the transaction are at least as favorable to the Plan as an arm's length transaction with an unrelated party, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) The I/F monitors compliance with the terms of the written license agreement (the License) between the Plan and Aztec Well Servicing Company, and takes any and all steps necessary to ensure that the Plan is protected, including, but not limited to, exercising its authority to terminate the License on 10 days' written notice; and

(e) The subject transaction is, in fact, on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party.

Section II.

The restrictions of sections 406(a)(1)(A), (C) and (D),

406(b)(1), and 406(b)(2) of the Act shall not apply, effective July 1, 2010, to: (1) the payment by the Plan's participants to BOUC for medical services provided as a result of the inclusion of BOUC's clinic, located in Farmington, New Mexico, as a network provider in the BlueCross BlueShield of New Mexico (BCBSNM) Network of Health Care Providers; and (2) the payment by the Plan to BCBSNM of the difference between BOUC's fee and the participant's co-pay, which difference is then transmitted by BCBSNM to BOUC, provided that the following conditions are satisfied:

(a) the terms of the medical services provided by BOUC to Plan participants are at least as favorable to the participants as those they could obtain in similar transactions with an unrelated party;

(b) the Plan participants will have access to all of the providers in BCBSNM's network and will be free to choose whether or not to use BOUC's clinic;

(c) at least 99% of the providers participating in the BCBSNM are unrelated to the companies whose employees participate in the Plan, or any other party in interest with respect to the Plan;

(d) BOUC will be treated no more favorably than any other provider participating in the BCBSNM; and

(e) the transactions are not part of an agreement, arrangement or understanding designed to benefit BOUC or any other party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 13, 2011 at 76 FR 77610.

EFFECTIVE DATE: With respect to the transactions described in Section II, this exemption is effective July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693-8546 (This is not a toll-free number.)

HSBC-North America (U.S.) Tax Reduction Investment Plan (the Plan)

Located in Mettawa, Illinois

[Exemption Application No. **D-11637**

Prohibited Transaction Exemption **2012-05**]

EXEMPTION

Effective March 2, 2009, the restrictions of sections 406(a)(1)(A) and 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,² shall not apply:

(1) to the acquisition of certain rights (the ADS Rights) by the Plan in connection with an offering (the Offering) of shares of stock (the Stock) in HSBC Holdings plc (Holdings) by Holdings, a party in interest with respect to the Plan,

(2) to the holding of the ADS Rights received by the Plan during the subscription period of the Offering; provided that the

²For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

conditions as set forth in Section II of this exemption were satisfied;

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(1) The receipt by the Plan of the ADS Rights occurred in connection with the Offering made available by Holdings on the same terms to all shareholders, such as the Plan, of American Depository Shares³ (the HSBC ADS) which represent the Stock of Holdings;

(2) The acquisition of the ADS Rights by the Plan resulted from an independent act of Holdings, as a corporate entity, and all holders of the ADS Rights, including the Plan, were treated in the same manner with respect to the acquisition of such rights;

(3) All holders of the ADS Rights, such as the Plan, received the same proportionate number of such rights based on

³American Depository Shares permit investment in foreign securities to trade on markets in the United States without many of the complications that would otherwise arise from such

the number of HSBC ADS held; and

(4) All decisions regarding the ADS Rights made by the Plan were made by an independent, qualified fiduciary which:

(a) conducted a due diligence review of the Offering;

(b) determined whether or not to direct the Plan to vote in favor of the Offering; and

(c) evaluated a prudent strategy for disposition of the ADS Rights under the Offering that were allocated to the Plan.

EFFECTIVE DATE: This exemption is effective, on March 2, 2009, the date of the announcement of the Offering.

WRITTEN COMMENTS

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the Notice in the FEDERAL REGISTER on November 14, 2011.⁴ All comments and

cross-border and cross-currency transactions.

⁴ 76 FR 70495, November 14, 2011.

requests for hearing were due by December 29, 2011.

During the comment period the Department received no requests for hearing. However, the Department did receive a comment letter, dated December 29, 2011, from the applicants (the Applicants). In the comment letter the Applicants requested one (1) amendment to the language of Section I(1), as set forth on page 70496 in the Notice. In this regard, the reference to the name, "HSBC Holding, plc," should be changed to "HSBC Holdings plc." The Department concurs with the Applicants' requested amendment to Section I(1).

In addition the Applicants requested three (3) clarifications to the Summary of Facts and Representations (the SFR) of the Notice. The Applicants' requested clarifications to the SFR are discussed, below, in an order that corresponds to the appearance of the relevant language in the Notice.

1. In paragraph 4, as set forth in the SFR, on page 70497 of the Notice, the Applicants clarify that HSBC North America Holdings, Inc. and its subsidiaries comprise all of the business interests of HSBC Holdings plc in the United States. The Department concurs with the Applicants' requested clarification.

2. In paragraph 16, as set forth in the SFR, on page 70499 and 70501 of the Notice, the Applicants clarify that further

examination of the fees under each of the options available to the Plan has shown that a stamp tax (a United Kingdom Stamp Duty Reserve Tax) would not have been incurred under Option (C). The Plan would only have paid a stamp tax under Option (A). The Department concurs with the Applicants' requested clarification.

3. In paragraph 19, as set forth in the SFR, on page 70502 of the Notice, the Applicants represent that the Offering included a default procedure to protect the interests of ADS Rights holders who did not take action with respect to the ADS Rights they received in the Offering. The Department concurs with the Applicants' requested clarification.

After full consideration and review of the entire record, including the written comment letter filed by the Applicants, the Department has determined to grant the exemption, as amended and clarified above. Comments submitted by the Applicants to the Department in the comment letter have been included as part of the public record of the exemption application. The complete application file (D-11637), including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and

representations supporting the Department's decision to grant this exemption refer to the Notice published on November 14, 2011, at 76 FR 70495.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Retirement Program for Employees of EnPro Industries (Plan)

Located in Charlotte, NC

[Prohibited Transaction Exemption **2012-06**;

Exemption Application No. **D-11662**]

EXEMPTION

The restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective July 15, 2011, to the in kind contribution (the Contribution) to the Plan of a guaranteed investment contract (the Annuity), issued by the Metropolitan Life Insurance Company, an unrelated party, by EnPro Industries, Inc. (EnPro); provided that the following conditions were satisfied:

(a) A qualified, independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan, determined whether the Contribution was in the interests of the Plan and protective of the Plan's participants and beneficiaries;

(b) The Independent Fiduciary reviewed, negotiated and approved the terms of the Contribution on behalf of the Plan in accordance with the fiduciary provisions of the Act;

(c) A qualified, independent appraiser determined the fair market value of the Annuity prior to the Contribution, and it updated such valuation on the date of the Contribution;

(d) The Annuity represented approximately 19% of the Plan's assets at the time of the Contribution;

(e) The Plan incurred no fees, commissions, or other charges or expenses in connection with the Contribution;

(f) The terms of the Contribution were no less favorable to the Plan than the terms negotiated at arm's length under similar circumstances between unrelated parties; and

(g) EnPro amended the Investment Policy Statement for the Plan in conformity with the recommendations of the Independent Fiduciary prior to the Contribution.

Effective Date: This exemption is effective as of July 15, 2011.

WRITTEN COMMENT

In the Notice of Proposed Exemption (76 FR 77619, December 13, 2011) (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the Notice within forty (40) days of the date of the publication of such Notice in the Federal Register. All comments and requests for a hearing from interested persons were due by

January 23, 2012.

During the comment period, the Department did not receive any requests for a public hearing. However, the Department did receive one written comment from a Plan participant, who sought to clarify whether the Plan had sufficient funds to cover Plan benefit obligations due before the Annuity matured on December 31, 2014. In a telephone call to the participant, a Department representative explained that Paragraph 20 of the Notice included a representation from the Independent Fiduciary, which had confirmed with the Plan's actuary that the Plan would be in a position to meet its benefit obligations from the date of the Contribution until the maturity date of the Annuity.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on December 13, 2011 at 76 FR 77619.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693-8648. (This is not a toll-free number.)

Genzyme Corporation 401(k) Plan and Its Successor Plans

(together, the Plan or the Applicant)

Located in Cambridge, MA

[Prohibited Transaction Exemption **2012-07**;

Exemption Application No. **D-11669**]

EXEMPTION

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,⁵ shall not apply, effective April 4, 2011, to (1) the acquisition by the Plan of contingent value rights (CVRs) as a result of the Plan's ownership of certain common stock (Genzyme Common Stock) in Genzyme Corporation (Genzyme), the Plan sponsor, in connection with (a) the purchase of shares (Shares) of Genzyme Common Stock pursuant to an exchange offer (the Exchange Offer) and a subsequent offer to the Exchange Offer (the Subsequent Exchange Offer) by GC Merger Corp. (the Purchaser), a wholly-owned subsidiary of sanofi-aventis (Sanofi), a party in interest with

⁵For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

respect to the Plan, and (b) the "short-form" merger (the Merger) of the Purchaser into Genzyme (together, the Transactions); (2) the continued holding of CVRs by the Plan; and (3) the resale of the CVRs by the Plan to Sanofi, pursuant to the exercise of repurchase rights available under certain circumstances specified in the Contingent Value Rights Agreement (the CVR Agreement).

This exemption is subject to the following conditions:

(a) Plan participants holding Genzyme Common Stock received one CVR for each Share on the effective date of the tender or cancellation of their Shares, in connection with the Transactions.

(b) The acquisition of CVRs by the Plan occurred in connection with the Transactions on the same terms and in the same manner as the acquisition of CVRs by all other holders of Genzyme Common Stock, other than Sanofi, the Purchaser, Genzyme and dissenting shareholders.

(c) The Plan's acquisition of CVRs resulted either (1) from a decision by a participant or beneficiary to tender Shares allocated to his or her account or
(2) following a decision by a participant or beneficiary not to tender Shares by reason of the Merger.

(d) The Plan did not pay any fees or commissions in connection with the acquisition of the CVRs, nor does it pay any

fees or commissions in connection with the holding of CVRs or sale of CVRs to Sanofi pursuant to an exercise of Sanofi's repurchase right under the CVR Agreement.

(e) Credit Suisse Securities (USA) LLC and Goldman Sachs & Co advised Genzyme that the consideration received by Genzyme shareholders, including Plan participants, in exchange for their Shares was "fair," from a financial point of view.

(f) The Plan does not acquire or hold CVRs other than those acquired in connection with the Transactions.

(g) Plan participants have the same rights with respect to CVRs allocated to their accounts under the Plan (including with respect to any repurchase of CVRs by Sanofi) as unrelated parties have with respect to CVRs not held under the Plan, and they may direct the Plan's trustee (the Trustee) to sell CVRs allocated to their respective accounts at any time.

(h) For so long as CVRs remain a permissible Plan investment, the retention or disposition by the Plan of CVRs allocated to a participant's or beneficiary's account is administered in accordance with the provisions of the Plan that are in effect for individually-directed investment of participant accounts.

EFFECTIVE DATE: This exemption is effective as of April 4, 2011.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 13, 2011, at 76 FR 77612.

EXTENSION OF COMMENT PERIOD

The notice of proposed exemption (the Notice) invited all current participants and beneficiaries of the Plan (Interested Persons) to submit comments or requests for a hearing to the Department by January 27, 2012. The Applicant agreed to notify Interested Persons by first class mail within 15 days of the date that the Notice appeared in the Federal Register. The Applicant confirmed that Interested Persons were notified via first class mail on December 28, 2011, less than 30 days prior to the final day of the comment period. To ensure that Interested Persons would have at least 30 days to provide comments to the Department, the Applicant agreed to extend the comment period to January 31, 2012. Accordingly, the Applicant sent a supplementary letter announcing the extension of the comment period to Interested Persons via first class mail on January 19, 2012.

WRITTEN COMMENTS

During the comment period, the Department received three

written comments with respect to the Notice, and no requests for a public hearing. The first two comments stated matters that were not germane to the exemption request. The third comment and a supplemental response (together, the Comment Letter) were submitted by Genzyme, and are intended to (1) clarify that the exemption would apply to successor plans to the current Plan; (2) request changes to Conditions (d) and (g) of the Notice; and (3) correct or clarify minor errors and inconsistencies in the Notice. Genzyme's Comment Letter and the Department's responses are described below.

1. Successor Plans. On page 77618 of the Summary of Facts and Representations (the Summary), Representation 17 states that if the exemption is granted, "it would also apply to successor plans to the current Plan."

While the proposed extension of relief to successor plans is mentioned in the Summary, Genzyme notes that the text of the exemption at the beginning of the Notice does not make reference to "successor plans." In order to avoid uncertainty in the future, Genzyme requests that the final text of the exemption reflect that any plan into which the Plan is merged or to which substantially all assets of the Plan are transferred will be entitled to rely on the exemption, to the same extent as the Plan

would be entitled to rely on the exemption if no such merger or transfer had occurred.

In response to this comment, the Department has revised the title of the final exemption to include the "Genzyme Corporation 401(k) Plan and Its Successor Plans," in order to clarify that relief extends to such successor plan(s).

2. Requested Changes to Conditions (d) and (g) of the Notice. Genzyme suggests that the Department consider revising Condition (d) of the Notice (on page 77613) to refer to "fees or commissions in connection with the holding of CVRs or a sale of CVRs to Sanofi," rather than to "fees or commissions in connection with the holding or sale of CVRs to Sanofi," as the condition currently reads. Genzyme states that this suggestion is offered not for the purpose of making any substantive change, but solely to enhance clarity.

In response to this comment, the Department has revised Condition (d) of the final exemption slightly to clarify the meaning of this condition and its applicability to Sanofi. The Department also notes a corresponding modification to Representation 23(d) of the Summary, on page 77618.

In addition, Condition (g) of the Notice requires that participants have the ability to direct the Trustee "to sell CVRs allocated to their respective accounts *at any time*" (emphasis

added). Genzyme notes that participants may, at certain times, be subject to limitations on their ability to direct the Trustee with regard to the investment of their accounts (e.g., during a "blackout period" within the meaning of section 101(i) of the Act, or when applicable insider trading policies would prevent a participant from selling securities). In order to avoid any implication that the language in Condition (g) would fail to be satisfied in such circumstances, Genzyme suggests that the wording be revised to require that participants have the ability to direct the Trustee "to sell CVRs allocated to their respective accounts *at any time, subject to any limitations that may be imposed by applicable law*" (emphasis added). Genzyme explains that this suggestion was made with the thought that there might be periods during which certain participants would be prohibited by federal securities laws from transacting in securities as to which they might have "insider" knowledge. Genzyme also emphasizes that there is no intention of imposing restrictions on the ability of participants to give investment directions with respect to CVRs held in their accounts under the Plan, except as otherwise required by applicable law.

In response to this comment, the Department has decided not to make the suggested revision to the Notice since it is inherently understood that the condition might be subject to

limitations imposed by applicable law (e.g., federal securities laws). However, the Department notes Genzyme's clarification to Condition (g) of the Notice and to Representation 23(g) of the Summary.

3. Minor Errors and Inconsistencies in the Notice. Genzyme requests that the two references to the merger of Sanofi into Genzyme (located in clause (1)(b) of the operative language on page 77612 of the Notice and in Representation 17 of the Summary on page 77618) be revised to refer, instead, to the merger of the Purchaser into Genzyme.

In addition, Genzyme states that when the Purchaser was merged into Genzyme, the Purchaser ceased to exist as a separate entity. Genzyme notes that the statements regarding the Purchaser in Representation 4 of the Summary (on page 77613) were made in the present tense while the Purchaser continued to exist as a separate entity. Given the passage of time and the fact that the Purchaser has merged into Genzyme, Genzyme states that it would be appropriate to change this paragraph to the past tense, as follows:

The Purchaser, a Massachusetts corporation, was incorporated on July 29, 2010, as a direct wholly-owned subsidiary of Sanofi. The Purchaser was organized by Sanofi to acquire Genzyme and did not conduct any unrelated activities between the time of its organization and the time of its merger into Genzyme. All of the

outstanding shares of the capital stock of the Purchaser were owned by Sanofi.

Further, Genzyme states that on page 77614 of the Summary, Representation 5 contains the following representation: "All Shares not tendered were converted into the right to receive the same Merger Consideration." Consistent with the preceding sentence and other information set forth in Representation 5, Genzyme states that the representation should instead read: "All Shares not tendered were converted into the right to receive the same Merger Consideration, except for Shares held by Sanofi, Genzyme and their subsidiaries, and Shares held by shareholders who properly perfected appraisal rights under Massachusetts law."

Representation 5 of the Summary also states that the Merger

Consideration⁶ in connection with the Exchange Offer and the Subsequent. Exchange Offer was paid on April 4, 2011. However, Genzyme notes that, as is correctly stated in Representation 7 of the Summary (on page 77614), the Merger Consideration paid in connection with the Subsequent Exchange Offer was actually paid on April 7, 2011.

Finally, Genzyme states that on page 77615 of the Summary, Representation 11 contains a typographical error. Genzyme explains that the phrase "subject to certain conditions and expectations" should read, instead, "subject to certain conditions and exceptions."

In response to the foregoing comments, the Department notes the clarifications and updates to the Notice.

Accordingly, after giving full consideration to the entire record, including the Comment Letter, the Department has determined to grant the exemption as modified herein. For further information regarding the comment and other matters discussed herein, Interested Persons are encouraged to obtain

⁶The Merger Consideration consisted of (a) \$74 in cash, less any applicable withholding for taxes and without interest, per Share, and (b) one CVR per Share.

copies of the exemption application file (Exemption Application No. D-11669) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

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Citigroup Inc. (Citigroup or the Applicant)

Located in New York, New York

[Prohibited Transaction Exemption **2012-08**;

Exemption Application No. **D-11680**]

EXEMPTION

Citigroup Inc. and its current and future affiliates (collectively, Citigroup) shall not be precluded, as of December 1, 2010, from functioning as a "qualified professional asset manager" (QPAM), pursuant to Prohibited Transaction Exemption 84-14 (PTE 84-14), (49 FR 9494, March 13, 1984, as amended on August 23, 2005 at 70 FR 49305), solely because of a failure to satisfy Section I(g) of PTE 84-14, as a result of Citigroup's affiliation with Citibank Belgium SA (CBB), an entity convicted of three (3) counts of criminal activity in Belgium, provided that the following conditions are met⁷:

(a) The affiliate convicted under Belgium law does not provide fiduciary or QPAM services to employee benefit plans

⁷ For purposes of this exemption, references to section 406 of ERISA should be read to refer to the corresponding provisions of section 4975 of the Code as well.

(plans) or otherwise exercise discretionary control over plan assets;

(b) ERISA-covered assets are not involved in the conduct that is the subject of the Belgian affiliate's conviction(s);

(c) Citigroup imposes its internal procedures, controls, and protocols on the Belgian affiliate to reduce the likelihood of any recurrence of the conduct that is the subject of the conviction(s), to the extent permitted by local law;

(d) This exemption is not applicable if Citigroup, or any affiliate (other than branches or affiliates found liable for similar crimes in Belgium in connection with the sale of certain structured notes (the Lehman Notes) is convicted of any of the crimes described in Section I(g) of PTE 84-14;

(e) Citigroup maintains records that demonstrate that the conditions of the exemption have been and continue to be met for at least six years following the conviction of an affiliate under Belgium law;

(f) Citigroup has adopted procedures to afford protection of the interests of participants and beneficiaries of employee benefit plans; and

(g) Citigroup complies with the other conditions of PTE 84-14, as amended.

EFFECTIVE DATE: This exemption is effective as of December 1, 2010.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on January 20, 2012 at 77 FR 3061.

WRITTEN COMMENTS

The Department received one written comment letter with respect to the Proposal. The letter was submitted by the Applicant in order to make some minor corrections and clarifications with respect to the Proposal.

The Applicant provided updated information that CBB was only convicted on three counts of criminal activity in Belgium.⁸ The Department has made a change in the first paragraph of this

⁸ CBB and three of its employees as of August 14, 2009 had been criminally charged with six counts of criminal activity. The three employees were each convicted on one count of criminal activity in Belgium.

exemption in response to this comment.

The Applicant requested that the Department make certain changes to Conditions (b) and (c) of the Proposal. The Applicant requested that, for sake of clarity, the word "Belgian" be inserted before "affiliate" in both Conditions (b) and (c). In addition, because the convictions are under appeal, the Applicant requested that the word "conduct" be substituted for "misconduct" in Condition (b), and the phrase "the conduct that is the subject of the convictions" be substituted for the word "misconduct" in Condition (c). The Department has made these requested changes.

The Applicant also requested that the Department make corresponding changes to the Summary of Facts and Representations (the Summary) section of the Proposal. The Department notes these revisions to Representation 8 of the Summary.

Condition (e) of the Proposal requires Citigroup to comply with certain recordkeeping requirements. However, Citigroup stated in its comment letter that only Condition (c) of the Proposal would lend itself to the maintenance of records regarding compliance with the exemption. Accordingly, Citigroup has requested that Condition (e) be revised to limit the recordkeeping requirement to "the conditions of subsection (c) of the exemption." The Department does not agree with the Applicant on this point because recordkeeping would apply to the continuing

validity of the exemption as a whole. Accordingly, the Department has not changed the condition.

Condition (f) of the Proposal currently provides that "Citigroup has adopted procedures to afford ample protection of the interests of the participants and beneficiaries of employee benefit plans." The Applicant stated that is unsure what the word "ample" is intended to mean and requested in its comment letter that the Department delete this word from Condition (f). The Department has done so. The Applicant also requested that the deletion of the word "ample" be made from Representation 8 of the Summary. The Department so notes.

In its comment letter, the Applicant had other requested changes to the Summary. The Applicant noted that the last sentence of Representation 2 indicates that CBB has no ERISA plan clients and is not expected to have any such clients in the future. According to the Applicant, although CBB does not act as a fiduciary to any ERISA plan, Citigroup cannot guarantee that an ERISA plan will never be a counterparty to any transaction entered into by CBB. As a result, the Applicant requested that the Department revise the last sentence of Representation 2 of the Proposal to state that "...CBB is not expected to have any ERISA plan clients for whom it will perform any fiduciary or QPAM services or otherwise exercise discretionary control over plan

assets in the future." In response, the Department notes this revision.

The Applicant represents that after a further review of the facts and circumstances surrounding the criminal convictions of CBB, it has determined that: (a) prior to his termination of employment, Jose de Penaranda de Franchimont was the Chief Country Officer and Chief Executive Officer of CBB, rather than its Chief Compliance Officer; and (b) the convictions were related to the use of fact sheets, in addition to marketing letters and leaflets, as well as a prospectus. The Applicant has therefore requested in its comment letter that Footnote 57 to Representation 3 be revised to replace Mr. de Penaranda de Franchimont's title as "Chief Country Officer and Chief Executive Officer." The Applicant also notes the correct spelling of Mr. de Penaranda de Franchimont's name. In addition, Citigroup has requested that the third sentence of Representation 3 be revised to refer to the "use of certain marketing letters, leaflets and fact sheets, as well as a prospectus." The Department notes these revisions.

Representation 5 addresses the reasons that the Proposal would be protective of the rights of participants and beneficiaries of affected plans. For purposes of clarity, the Applicant requested in its comment letter that the Department

revise subsection (d) of Representation 5 to read: "A consistent framework and requirements were developed through the policy for mandatory sales force training on products, as well as Citigroup policies." The Department notes this revision.

Representation 7 addresses Citigroup's compliance policies and procedures and notes that Mr. Staroukine, CBB's Belgium Country Counsel, has no involvement with ERISA plans and will not have any future dealings with ERISA plans while employed by Citigroup, CBB, or an affiliate. The Applicant stated in its comment letter that although it is correct that Mr. Staroukine does not act as a fiduciary to any ERISA plan, CBB cannot ensure that he will never have any involvement in any transaction in which an ERISA plan may be a counterparty. The Department so notes. In addition, Citigroup contended in its comment letter that Mr. Staroukine should not be prohibited from ever acting as a fiduciary to an ERISA plan in the event his conviction is overturned on appeal. Therefore the Applicant requested that the last sentence of Representation 7 of the Proposal be revised to read: "The Applicant further represents that Mr. Staroukine, although currently serving as CBB's Belgium Country Counsel, does not act as a fiduciary to any ERISA plan, and will not act as a fiduciary to any ERISA plan while he is employed by the Applicant, CBB or an affiliate, unless the convictions are

overturned on appeal. The Department notes this revision.

The Department has considered the entire record, including the comment letter filed by the Applicant, and has determined to grant the exemption as proposed, subject to the revisions described herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March, 2012.

Lyssa E. Hall
Acting Director of Exemption
Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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